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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
AT PORTLAND

**BOARDS OF TRUSTEES OF THE AGC-
OPERATING ENGINEER HEALTH AND
WELFARE FUND; OPERATING
ENGINEERS PENSION FUND; and
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 701-AGC TRAINING
TRUST FUND,**

Plaintiffs,

v.

K.F. JACOBSEN & CO., INC., an Oregon
Corporation, Oregon Registry No. 020263-18,

Defendant.

Case No.

COMPLAINT FOR BREACH OF
COLLECTIVE BARGAINING
AGREEMENT AND DELINQUENT
CONTRIBUTIONS (ERISA)

For their complaint, the plaintiffs allege as follows:

I. PARTIES, JURISDICTION & VENUE

1. Plaintiffs are the Boards of Trustees (“Board of Trustees” or “Trustees”) of the AGC-International Union of Operating Engineers Local 701 Health and Welfare Fund (“Health Fund”), AGC-International Union of Operating Engineers Local 701 Pension Fund

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(“Pension Fund”), and the AGC-International Union of Operating Engineers Local 701 Training Trust Fund (“Training Fund”)(collectively referred to as “the Trust Funds”).

2. The Health and Training Funds are “employee welfare benefit plans” as that term is defined in 29 U.S.C. § 1002(1) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The Pension Fund is an “employee pension benefit plan” as that term is defined in Section 3(2)(A) of ERISA, 29 U.S.C. § 1002(2)(A).

3. The Trust Funds are “multiemployer plans” as that term is defined in Section 3(37) of ERISA, 29 U.S.C. § 1002(37)(A).

4. The Trustees of the Trust Funds have discretionary authority and control over the management of the Trust Funds and are “fiduciaries” as that term is defined in Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

5. The Trust Funds act as a collection agent for vacation funds, union dues and ancillary funds, which includes funds owed to the Construction Industry Fund.

6. Defendant K. F. Jacobsen & Co., Inc. (hereafter “K.F. Jacobsen”), is an Oregon corporation. At all times material to this proceeding Defendant K.F. Jacobsen has been an “employer” as that term is defined in 29 U.S.C. § 152(2) of the Labor-Management Relations Act (LMRA) and Section 3(5) of ERISA, 29 U.S.C. § 1002(5), and has been engaged in an “industry or activity affecting commerce” as that term is defined in 29 U.S.C. §§ 142(1) and (3) of the LMRA and Section 3(12) of ERISA, 29 U.S.C. § 1002(12).

7. At all times material to this proceeding, K.F. Jacobsen has been signatory to a written collective bargaining agreement (“CBA”) with the International Union of Operating Engineers Local 701 (“Local 701”).

8. The CBA obligates K.F. Jacobsen to submit monthly fringe benefit contributions to the Trust Funds for the covered hours worked by its employees. The CBA further incorporates the terms and conditions of the Trust Agreements, as amended, that governs each of the respective Trust Funds.

9. The Court has subject matter jurisdiction over all Claims for Relief brought by the Board of Trustees of the Trust Funds against K.F. Jacobsen for violation of the Sections 502 and 515 of ERISA, 29 U.S.C. §§ 1132 and 1145, pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1). The Court also has jurisdiction over all Claims for Relief brought by the Trust Funds against K.F. Jacobsen pursuant to the provisions of 29 U.S.C. § 185(a) of the LMRA.

10. Pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), venue is proper in this district, the district in which the Trust Funds are administered.

II. CLAIM FOR RELIEF: **UNPAID FRINGE BENEFIT CONTRIBUTIONS**

11. At all times material to this proceeding K.F. Jacobsen has been bound by a written collective bargaining agreement (“CBA”) with the International Union of Operating Engineers Local 701 (“Local 701”). Under the terms of the CBA, K.F. Jacobsen agrees to be bound by the terms and conditions of the Trust Agreements which created the Trust Funds.

12. Pursuant to the terms of the CBA, and incorporated Trust Agreements, K.F. Jacobsen agreed to file monthly remittance report forms, pay fringe benefit contributions on behalf of its employees performing work under the CBA to the Trust Funds, and to remit union dues and other ancillary funds by the 20th day of the month following the month in which the work was performed.

13. The Trust Agreements, which created the Trust Funds, and the Delinquency

Procedures, provide that in the event an employer fails to make a timely payment of fringe benefit contributions, the employer is liable for the delinquent fringe benefit contributions, interest on the delinquent fringe benefit contributions assessed at twelve percent (12%) per annum from the date the contributions became due until paid and liquidated damages in an amount equal to ten percent (10%) of the delinquent or late paid fringe benefit contributions for each month that the fringe benefit contributions are late or delinquent.

14. Local 701 is entitled to recover the union dues pursuant to the terms of the collective bargaining agreement and interest on the delinquent or late paid union dues from the date payment became due until paid at the rate of nine percent (9%) per annum pursuant to the provisions of ORS 82.010.

15. K.F. Jacobsen has failed to timely file and pay its contributions to the Trust Funds, its ancillary funds, and its union dues. For the months of February and March 2019, K.F. Jacobsen owes \$10,749.53, interest at twelve percent (12%) through the date of payment (\$65.68 through April 23, 2019), and \$1,126.00 in liquidated damages.

16. K.F. Jacobsen owes an unknown amount for April 2019 through current, to be proved upon motions or at trial.

17. The Trust Agreements that created the Trust Funds provide that, in the event that an employer fails to timely pay fringe benefit contributions and legal proceedings are instituted, the Trustees of the Trust Funds are entitled to recover a reasonable attorneys' fee. The Trustees of the Trust Funds are entitled to recover a reasonable attorneys' fee from K.F. Jacobsen.

18. The Trustees of the Trust Funds are also entitled to recover a reasonable attorneys' fee from K.F. Jacobsen pursuant to Section 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D).

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a decree and judgment against K.F. Jacobsen as follows:

1. Judgment against K.F. Jacobsen in the amount of \$10,749.53 in contributions, interest at twelve percent (12%) through the date of payment on the delinquent fringe benefit contributions (\$65.68 through April 23, 2019), and \$1,126.26 in liquidated damages for the delinquent months of February and March 2019 to the Trust Funds;
2. Judgment against K.F. Jacobsen for the delinquent period of April 2019 through the date of the entry of judgment, plus liquidated damages, and interest to be determined upon motions or at trial;
3. Judgment against K.F. Jacobsen for costs and attorney fees;
4. For such further relief as the Court deems just and equitable.

DATED this 23rd day of April, 2019

s/ Noelle E. Dwarzski
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